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ADJOINING LANDOWNERS—LATERAL SUPPORT—SUCCESSORS IN TITLE—RETAINING WALL.—A. excavated upon his lot and placed a retaining wall wholly upon B.'s adjoining lot. At a later date, the ownership of the lots having passed out of A. and B., the retaining wall disintegrated, causing stones to fall on the lot formerly owned by B. The successor in title to A. sued B.'s successor in title in equity for an injunction to compel him to maintain the wall, and to recover damages for the injury caused by the falling stones. B.'s successor in title counterclaimed for substantially the same relief. *Held*, A.'s successor in title is entitled to damages but no injunction. *Lyons v. Walsh* (Conn.), 101 Atl. 488.

A landowner has a right to excavate on his own land, provided he does not cause injury to his neighbor's soil. But if by excavating he deprives the adjoining land of its natural support, thereby causing it to fall or crumble, he is liable in damages. *Gilmore v. Driscoll*, 122 Mass. 199, 23 Am. Rep. 312. See MINOR, REAL PROP., § 122; TIFFANY, THE MODERN LAW OF REAL PROPERTY, § 301. Such liability exists regardless of negligence. *C. & O. Ry. Co. v. May*, 157 Ky. 708, 163 S. W. 1112. But this absolute right to lateral support extends only to the soil in its natural condition. *Lasala v. Holbrook*, 4 Paige (N. Y.) 380; *McGettigan v. Potts*, 149 Pa. St. 155, 24 Atl. 198. For a discussion of the lateral support of land encumbered by structures, see 3 VA. LAW REV. 636.

An injunction will sometimes be granted to prevent an adjoining landowner from digging within certain limits of his neighbor's boundary. *Farrand v. Marshall*, 19 Barb. (N. Y.) 380. On the other hand, it is not the duty of the landowner, whose soil is endangered, to shore up his soil. *Gildersleeve v. Hammond*, 109 Mich. 431, 67 N. W. 519. And a successor in title is not liable for failure to erect a retaining wall where a former owner has unlawfully excavated. *Secongost v. Missouri Pac. Ry. Co.*, 53 Mo. App. 369.

The right of action accrues when the injury actually occurs, and not necessarily when the excavation is made. The actionable wrong is not the excavation, but the act of allowing the other person's land to fall. *Williams v. Kennedy*, 14 Barb. (N. Y.) 629; *West Pratt Coal Co. v. Dorman*, 161 Ala. 389, 49 South. 849, 135 Am. St. Rep. 127, 18 Ann. Cas. 750, 23 L. R. A. (N. S.) 805. But a contrary view is maintained by some courts, on the theory that it is the removal of the support which constitutes the breach of duty. *Noonan v. Pardee*, 200 Pa. 474, 50 Atl. 255, 86 Am. St. Rep. 722, 55 L. R. A. 411. However, it seems generally agreed that the excavator is the one liable in damages, even though he has no control over the land when the falling occurs. *Green v. Berge*, 105 Cal. 52, 38 Pac. 539, 45 Am. St. Rep. 25; *Secongost v. Missouri Pac. Ry. Co.*, *supra*.

The right to sue passes to the owner in possession when the subsidence occurs, regardless of the date of conveyance. *Noonan v. Pardee*, *supra*. It has been held that a lessee in possession may recover for damages suffered from an unlawful excavation. *Walker v. Strosnider*, 67 W. Va. 39, 67 S. E. 1087, 21 Ann. Cas. 1. In an English case, the reversioners were allowed to recover even though the property was occupied by a tenant. *Jeffries v. Williams*, 5 Ex. 792.

From the foregoing cases, the following rules seem deducible: Where the excavator has not erected a retaining wall to protect the lateral support, an action for damages lies against him only, regardless of whether he is owner at the time of the subsidence. But, if an excavator places an artificial wall to protect the adjoining soil, such wall becomes a charge upon the land to which it is attached, and a successor in title, to the land on which the wall rests, is liable for the injury resulting from his failure to maintain it.

ARMY AND NAVY—ENLISTMENT OF MINORS—RIGHT OF PARENTS TO DISCHARGE.—The respondent filed a petition in *habeas corpus* on behalf of his brother-in-law to secure his discharge from the army, on the ground that he is a minor, enlisted without his parent's consent. Prior to the petition, formal charges had been preferred against him for fraudulent enlistment, and he was being held to await court-martial. *Held*, the prisoner will not be discharged. *Ex parte Dostal*, 243 Fed. 664. For a discussion of the principles involved, see 4 VA. LAW REV. 232.

AUTOMOBILES—CARE REQUIRED OF AUTOMOBILE DRIVERS—PEDESTRIANS.—While unlawfully playing football in a city street, a boy was run over by an automobile. The boy did not see the approaching automobile, although frequently looking in that direction. The driver of the automobile failed to give any warning of his approach or to make any effort to avoid an accident. *Held*, the driver is liable. *Dercin v. Frenier* (Vt.), 100 Atl. 760. For a discussion of the principles involving the duty of an automobile driver, see 2 VA. LAW REV. 298. For a discussion of the principles involving the duty of a pedestrian, see 4 VA. LAW REV. 145.

BILLS AND NOTES—NEGOTIABILITY—EXTENSION OF TIME.—The Negotiable Instruments Law declares that a negotiable instrument must be payable on demand or at a fixed or determinable future time. The plaintiff, a holder in due course, brought suit upon notes otherwise negotiable, but which contained the provision that "all parties to this note, including sureties, indorsers, and guarantors consent to extensions of time on this note." *Held*, the notes are not negotiable. *Cedar Rapids National Bank v. Weber* (Iowa), 164 N. W. 233.

The provision of the Negotiable Instrument Law concerning certainty of time of payment is merely declaratory of the common law. Under the common law rule it was not required that the date of payment be definitely set forth in the instrument, provided it was payable *absolutely*, that is, it must be certain to fall due. Consequently instruments payable "on demand," "at sight," "after sight," "on or before a certain date" have always been held to be negotiable. *First National Bank v. Skeen*, 101 Mo. 683, 14 S. W. 732. See also BIGELOW, BILLS, NOTES AND CHECKS, 2 ed., 32 *et seq.* On this ground it has been held that a provision like the one in the instant case does not destroy the negotiability of the instrument. *City National Bank v. Goodloe-McClelland Com. Co.*, 93 Mo. App. 123.

A distinction was made in the early cases in regard to such provi-